IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/07/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.21735 OF 2000
and
W.M.P.NO.31548 OF 2000

Mr. Sebastikannu,
S/o. A.K. Irudayasamy .. Petitioner

-Vs-

1. The State of Tamilnadu,
rep. by its Secretary to
State of Tamilnadu,
Department of Industries and
Commerce, Fort St. George,
Chennai 9.

2. The Industries Commissioner,
and Director of Industries and
Commerce, Chepauk, Chennai 5.

3. The Joint Director of Industries
and Commerce (Chemicals),
Chemical Testing and Analitical
Laboratory, Guindy,
Chennai 600 032.

4. The Principal,
Institute of Ceramic Technology,
Virudhachalam, Cuddalore District. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.Vedantham Srinivasan

For Respondents 1-3 : Ms.Thenmozhi Shivaperumal
Addl. Govt. Pleader

:J U D G M E N T

The petitioner was appointed as Laboratory Attendant by the fourth respondent in the Institute of Ceramic Technology, Virudhachalam, Cuddalore District in December, 1965 and continued as such till 1977 when he was upgraded as Lab-Assistant Grade-II. He was continuing as such till 1986. Subsequently, under G.O.Ms.No.541 dated 1.8.1992 and G.O.Ms.No.664 dated 24.8.1992 the post of Lab Assistant II was merged in Selection Grade Lab Assistant I and accordingly pay was fixed by the Government. Higher pay was accordingly paid to the petitioner on the basis of such orders. Subsequently, the impugned order No.21878 dated 29.6.2000 was issued indicating that by mistake higher pay had been allowed to the petitioner and the excess amount was directed to be recovered. The petitioner has prayed for quashing the aforesaid order and sought for a direction to pay the amount indicated in G.O. Ms.No.541 and refund the amount recovered from him.

2. A counter affidavit has been filed on behalf of the respondents indicating that by mistake higher pay scale had been fixed and when such mistake was recovered, a direction was issued for recovery of the amount.

3. Learned counsel appearing for the petitioner has submitted that in fact as per the relevant provisions correct pay scale has been fixed and the subsequent order is improper.

4. On going through the orders passed by the Government as well as the relevant papers, this contention does not appear to be correct. It is evident that the petitioner was appointed to the higher post of Lab Assistant Grade II with effect from 30.9.1978 and was moved to the Selection Grade Post of Laboratory Assistant Grade II with effect from 1.10.1988 on completion of 10 years service as Laboratory Assistant Grade II. The post held by the petitioner, namely Laboratory Assistant Grade II as on 1.6.88 in the scale of pay of Rs.505-845 was merged into the post of Laboratory Assistant Grade I and the merged category was redesignated as Laboratory Assistant with scale of pay of Rs.950-1500 as per G.O.Ms.No.541 with restrospective effect from 1.10.1988. It was erroneously assumed that since the petitioner was holding a selection grade post earlier he should be placed in the Selection Grade of the merged post and accordingly higher scale of pay was allowed with effect from 1.12.1992. The contention raised in the counter affidavit to the effect that the petitioner would have been entitled to the Selection Grade pay scale in the merged category only after completion of a further period of 10 years with effect from 1988 is correct. Therefore, the prayer of the petitioner that he should be given the higher scale of pay can be considered only after completion of ten years. It is therefore apparent that for the in between period till the petitioner had completed 10 years, payment of higher pay was on account of a mistake and to that extent the impugned order passed is justified.

5. However, the learned counsel for the petitioner has also contended that even assuming that some higher amount had been paid by mistake, after long lapse of time there should not be a direction for recovery of such

amount. For the aforesaid purpose, the petitioner has placed reliance upon a decision of the Supreme Court reported in 1995 Supp (1) S.C.C. 18 (SAHIB RAM v. STATE OF HARYANA AND OTHERS). In the said case, almost under the similar circumstance a person had been given higher scale of pay on account of mistake committed by the Government. It was observed in the said case as follows :-

 . . 5. Admittedly the appellant does not posses the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. (Emphasis added)

Similar view has been expressed by the Supreme Court in 1994(2)SCC 5 21 (SHYAM BABU VERMA & OTHERS v. UNION OF INDIA & OTHERS).

6. The principle in the aforesaid case squarely applicable to the present case and, therefore, the direction regarding recovery of excess amount paid to the petitioner is not justified.

7. Learned counsel appearing for the respondents has however placed reliance upon several decisions of the Supreme Court, namely, A.I.R. 1979 SC 621 (M/s. MOTILAL PADAMPAT SUGAR MILLS CO. LTD., v. THE STATE OF UTTAR PRADESH AND OTHERS), A.I.R. 1986 SC 806 (UNION OF INDIA AND OTHERS v. GODFREY PHILIPS INDIA LTD.) and A.I.R. 1991 SC 14 (VASANTKUMAR RADHAKISAN VORA v. THE BOARD OF TRUSTEES OF THE PORT OF BOMBAY) in support of the contention that there cannot be any question of promissory estoppel against the provisions contained in a statute and therefore, the Government was

justified in making the recovery.

There is no quarrel over the proposition that there cannot be any estoppel against a statute.

8. Learned counsel for the respondents has also placed strong reliance upon the decision of the Supreme Court reported in JT 2000(6) SC 217 (UNION OF INDIA & OTHERS v. SMT. SUJATHA VEDACHALAM & ANOTHER). In the said case, the employee was working as Senior Accountant in the office of Accountant General in Maharashtra in a particular pay scale. Subsequently for personal reasons, the employee himself has sought transfer to Accountant General, Karnataka at Bangalore. Such a request was accepted on certain terms and conditions stipulated by the employer which were accepted by the employee. One of the conditions was that the employee has to technically resign from the post, which she was holding, and she was to join as a dir ect recruit to a lower post of Clerk. On acceptance of the terms and conditions, the respondent was transferred as a Clerk to the office of Accountant General, Karnataka at Bangalore. After the transfer to a lower post her pay was erroneously fixed at Rs.1250/- per month. But, when the mistake was recovered, her pay scale was re-fixed and there was a direction for recovery of excess amount which was successfully challenged before the Central

Administrative Tribunal. This order was set aside by the Supreme Court by following JT 2000(4) SC 374 (COMPTROLLER & AUDITIOR GENERAL OF INDIA & OTHERS).

9. As already noticed that the facts are peculiar and the employee herself wanted transfer and had accepted the conditions. In JT 2000(4) SC 374 (cited supra) also the employee had sought for transfer on certain terms and conditions which h epted. The facts and circumstances of those two cases are clearly distinguishable from the present facts. As already indicated, I see no difference in the factual scenario in the decision of the Supreme Court in 1995 Supp (1) S.C.C 18 (cited supra) and in the present case.

10. Accordingly, the writ petition is allowed in part and the direction regarding recovery of the amount is quashed. Recovery, if any, made may be refunded to the petitioner. It goes without saying that the petitioner would be entitled to the scale of pay as per the subsequent decision of the Government in order dated 29.6.2000 and such order is quashed only to the extent regarding direction for recovery of the amount. No costs.

Index : Yes
Internet : Yes

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To

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rep. by its Secretary to
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